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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/821,269
Filing Date: April 09, 2004
Appellant(s): STERCHI ET AL.

Raymond Y. Mah
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/09/08 appealing from the Office action mailed 7/24/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,435,554	Lipson	7-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-24 and 104-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,435,554 to Lipson.

Claims 1, 9, 17, 19 and 104: Lipson teaches a baseball video game wherein animated action is performed by a pitcher character in response to input by a user provided through a user-operable controller, a method of controlling game play comprising monitoring for user input on the user-operable controller requesting release of a baseball pitch by the pitcher character (fig 4b el. 112). Detecting when user input is requested on the user-operable controller requesting release of the baseball pitch by the pitcher character (fig 4b el. 114,116). Comparing a time at which the user input is detected to an optimal pitch release timing (fig 4b el. 128,130). Then controlling a timing of a break on the baseball pitch based on the comparison (Par 9:56-66, Par 13:15-28, fig 4c el. 200).

Lipson fails to specifically teach that the above method of controlling the timing of a break on a baseball pitch is done at the beginning of the pitcher's character's wind-up session. And that the releasing of the pitch corresponds to

the time at which the user input is detected since the pitcher character's wind-up has began. However, applicant's invention is directed to using a gauge to determine when a pitch break occurs in the trajectory of the ball. Lipson's invention is also directed to using a gauge to determine when a pitch break occurs in the trajectory of the ball. To have the gauge correspond to the beginning of the pitchers wind up would have been obvious to one having ordinary skill in the art. In real baseball, the pitch style and break point of the pitch is dependent on the power and movement exhibited during the wind up session and ball release session of the pitcher. Lipson's gauges measures these attributes (i.e. power and pitch style). To now have these gauges correspond to the wind up session of a pitcher would have been obvious to one of ordinary skill in the art.

Claims 2, 10, 18 and 106: Lipson inherently teaches the timing of the break on the baseball pitch occurs relatively early in its flight when the time at which the user input is detected occurs earlier than the optimal pitch release timing. This feature is inherent since Lipson's system allows the pitcher to first select the type of pitch (curve, fast etc… Par 4:67-5:1-14) and Lipson's maximum and optimal break is based on the type of pitch and user selections (Par 13:15-27)

Claims 3, 11 and 19: Lipson inherently teaches the timing of the break on the baseball pitch occurs relatively late in its flight when the time at which the user input is detected occurs at or during the optimal pitch release timing. This feature is inherent since Lipson's system allows the pitcher to first select the type of pitch (curve, fast etc…

Par 4:67-5:1-14) and Lipson's maximum and optimal break is based on the type of pitch and user selections (Par 13:15-27).

Claims 4,12,20 and 107: Lipson inherently teaches the timing of the break on the baseball will result in the pitch being outside of a batter character's strike zone when the time at which the user input is detected occurs after the optimal pitch release timing (Par 6:36-50, fig 38 el. 78,80).

Claims 5, 13, 21 and 108: the method of claim 1 wherein the optimal pitch release timing is a period of time (abstract).

Claims 6, 14, 22 and 109: the method of claim 5 wherein the amount of time in the period of time forming the optimal pitch timing is variable (Par 9:22-49).

Claims 7, 15, 23 and 110: Lipson teaches all the present invention but fail to specifically teach the amount of time in the period of time is varied based on performance statistics of the pitcher character. However, Lipson pointed out that basing the pitcher's abilities and skills on statistical data is extremely old in the art (Par 1:24-39). Therefore, it would have been an obvious design choice well within the skill set of an ordinary skill artisan to have the amount of time in the period of time varied based on performance statistics of the pitcher character. One would be motivated to incorporate this teaching if it is desired that the abilities and skill set of a pitcher be affected by the pitchers previous performance, further adding to the realism of the video game.

Claims 8, 16, 24 and 111: Lipson fails to teach the amount of time in the period of time is varied based on a type of pitch selected by input on the user-operable controller that controls the action performed by the pitcher character. However, it is generally

known in baseball that some pitch-types are harder to throw. Therefore, it would have been obvious to one of ordinary skill in the art to simulate the difficulties of the pitch-types by assigning a different time amount to each type of pitch to further simulate the difficulty level of the specific pitch. This would further add realism to the game.

(10) Response to Argument

On page 14, appellant argues, "Lipson discloses displaying a first gauge 66 in Fig. 3a. After a player depresses a button while the first gauge 66 is being displayed, a second gauge 82 is then displayed as illustrated in Fig. 3b. The first gauge 66 is a pitch type and quality selector gauge. The second gauge 82 is a power gauge. Neither the pitch type and quality selector gauge 66 nor the gauge 82 discloses a release meter as explicitly required by claim 17".

The examiner respectfully disagrees. After the pitch type has been selected by Lipson's user, Lipson shows that the system proceeds to a state where the pitch quality is set as a function of the indicator position relative to the optimal zone location designated by markers 76, 78, and 80. Game flow then moves into state 132 where the specific button that was depressed in state 116 is recorded. This determines what style of pitch will be thrown (i.e., curve ball, fastball, special pitch). Hence, after game flow has exited state 132, the player has already greatly affected the upcoming pitch by controlling the pitch type, pitch quality and pitch style. However, at this point the player controls another facet of the pitch, i.e., power as can be seen by reference to FIG. 4c. The system also calculates the sensitivity or the amount of pitch control associated with

the pitch. The sensitivity is also calculated as a function of pitch quality and pitch velocity whereby pitch control will be greater for a higher quality pitch and less if the maximum power is applied to a pitch. To determine a path that the pitched ball will take to the plate, flow proceeds to state 162 where the horizontal displacement (maximum curve) and the vertical displacement (maximum break) are determined based on the user selections for pitch style, pitch quality and pitch power. “The operation of state 200 commences in a start state 148 and proceeds to state 150 in which the final velocity of the **ball upon release from the pitcher** is determined “ (col12:46-49).

Lipson's gauge is used to calculate and determine the trajectory of the pitched ball. Lipson gauge is no different from a release meter that determines how the pitched ball is released.

On page 14, appellant argues, “Neither the pitch type and quality selector gauge 66 nor the power gauge 82 enables comparison to an optimal release timing as required by claims 1, 9 and 104. Accordingly, the Final Rejection's (page 3) allegation that "Lipson's invention is also directed to using a gauge to determine when a pitch break occurs in the trajectory of the ball" is unfounded. While Lipson does discloses gauges 66 and 82, these gauges 66 and 82 are directed to different parameters (pitch type, power, etc.) than the parameter (release timing) claimed.”

The examiner respectfully disagrees. Lipson teaches comparison to an optimal release timing. For example, after the pitch type has been selected by Lipson’s user, Lipson shows that the system proceeds to a state where the pitch quality is set as a function of the indicator position relative to the **optimal zone location designated by**

markers 76, 78, and 80. Furthermore, Lipson teaches the release parameter timing. For example, to determine a path that the pitched ball will take to the plate, Lipson's game flow proceeds to state 162 where the horizontal displacement (maximum curve) and the vertical displacement (maximum break) are determined based on the user selections for pitch style, pitch quality and pitch power. "The operation of state 200 commences in a start state 148 and proceeds to state 150 in which the final velocity of the **ball upon release from the pitcher** is determined " (col12:46-49).

On pages 19-20, appellant argues, " Moreover, Lipson actually teaches away from "hav[ing] these gauges correspond to the wind up session of a pitcher" as alleged by the Final Rejection. In particular, Lipson explicitly discloses displaying gauges 66 and 82 serially (i.e., displayed one after the other) with a respective indicator 74, 86 that repeatedly resets and rotates until a player presses a button (see, e.g., col. 6, lines 59-65). If the pitcher had already begun the windup before Lipson's gauges 66 and 82 were serially displayed as alleged in the Final Rejection, either the windup would have to pause or the user would have to depress a controller button too quickly in response to the displayed gauge, thereby defeating the purpose of the repeated reset and rotation of the indicators 74, 86 respectively on the gauges 66, 82 and making it virtually impossible for the player to make selections in all the gauges (and the system to perform the associated processing) during the relatively brief duration of a pitcher's wind-up."

The examiner respectfully disagrees. There is absolutely nothing in Lipson's reference that mentioned that displaying the pitch wind up animation while monitoring

the gauge will not work or should not be tried. Thus, Lipson does not teach away. When a pitcher winds up to deliver a pitch, the pitcher is using some level of power and pitch style. To have the gauges correlate to the wind up session of the pitcher would not teach away from Lipson's BASEBALL SIMULATION system. Applicant should respectfully note that the current invention merely correlates the pitchers windup to the gauges. There is no actual stipulation whatsoever of a physical relation that will require the player to pause or depress a button in order to catch up with the simulation. In a general sense, Lipson's gauges are used to measure the style/characteristics of a pitch and the trajectory the pitch will follow after the ball is released (i.e. the windup characteristics which determines the pitch style, break time and power of the pitch). Moreover, if the pitcher had already begun the windup before Lipson's gauges 66 and 82 were serially displayed as argued by appellant above, the user would have to depress a controller button quickly in response to the displayed gauge which still meets the limitation of the current claimed language. Or the system will simply reset the animation of the windup itself. An ordinary skilled programmer that is capable of resetting the animation of the gauge is more than capable of resetting the animation of the windup. Furthermore, appellant should respectfully note that the obvious rejection as shown in the final office action is modifying Lipson to display the windup animation while displaying the pitcher's gauge. The rejection is not modifying Lipson to display the pitcher's gauge after the windup animation. Please see final office action dated 7/24/08 par 4.

On page 22, appellant argues, “Moreover, the serially-made user selections via gauges 82 and 66 are explicitly described by Lipson as being pre-pitch (see, e.g., "Once the power of the pitch has been set, a final pre-pitch input is made in state 146...Upon leaving state 146, the player has inputted a total of five various pitch factors, each of which will affect the upcoming pitch in a separate manner. These five factors are the throw type, pitch type, pitch quality, pitch power, and pitch target location (emphasis added)" in col. 10, lines 42-62 of Lipson). In addition to being explicitly described as "pre-pitch", the serially-displayed nature (one after the other) of gauges 66 and 82 and the pre- pitch input of directional control (see col. 10, line 42-43) that must be subsequently input, received and processed after user input using serially- displayed gauges 66 and 82 lead to the clear conclusion that gauges 66 and 82 cannot possibly be displayed and utilized after the pitcher character's wind-up has begun.”

The examiner respectfully disagrees. Once again, gauges 66 and 82 are used to determine the trajectory of the pitched ball. The trajectory of the pitched ball is determined by the throw type, pitch type, pitch quality, and pitch target location exhibited by the pitcher during the wind up session of a pitcher. To display a windup animation while measuring these parameters would have been obvious to one of ordinary skilled in the art wherein the motivation is to add realism to the game. The difference between the parameters that Lipson measures and the parameters that the currently claimed invention is that Lipson gives the user the ability to measure and specify more than the pitch break parameter. As shown in Lipson's col 12:52-55, " Specifically, for a given style of pitch there will be a certain range of obtainable

velocities and the particular velocity chosen will depend on the amount of power applied. " Gauges 66 and 82 are both in a shape of a horse shoe displayed sequentially. Lipson is a simulation game. To display a windup animation (even two windup animation, one fore each gauge) while displaying the gauges is not an impossible task and is well within the skill set of an ordinary skilled artisan.

On page 23, appellant argues, "With respect to the statements in the preceding paragraph (presented in Appellant's October 8, 2008 "After-Final" Response), the continuation page of the Advisory Action argues "However, releasing the ball at different points is not claimed nor it is disclose any where in the specification. The examiner is only aware of the current disclosure of releasing the ball once as suppose to releasing the ball multiple times." What is explicitly claimed and described in the specification is a pitch release point corresponding to a detected user input, such that the release occurs at a point when the input is detected."

Once again, the examiner noted that the pitcher's gauge is not monitored while displaying the animation of the pitcher pitching the ball. Col 3:61-68 of Lipson states, "The present invention allows multiple real-world factors to be controlled by the user to create a game simulation where the game results are more dependent on user operation and less dependent on computer-generated statistics. By allowing a user's inputs, to affect the real-world factors present in baseball, the user becomes a more active and realistic participant in the simulation." To display the animation of the pitcher pitching the ball while monitoring the pitcher's gauge would have been obvious to one of

ordinary skilled artisan in order to add more realism to the simulation. Please see par 4 of the final office action.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Emmanuel Omotosho/

Examiner, Art Unit 3714

Conferees:

/Dmitry Suhol/

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/Peter D. Vo/

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